

## SENATE BILL NO. 93

INTRODUCED BY M. HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE FOR ADDRESSING LOST, DESTROYED, OR STOLEN CASHIER'S CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.** (1) In this section, the following definitions apply:

(a) "Check" means a cashier's check, teller's check, or certified check.

(b) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(c) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that:

(i) the declarer lost possession of a check;

(ii) the declarer is the drawer or payee of the check in the case of a certified check or the remitter or payee of the check in the case of a cashier's check or teller's check;

(iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure; and

(iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(d) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(2) (a) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check if:

(i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check;

(ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;

(iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and

(iv) the claimant provides reasonable identification if requested by the obligated bank.

(b) Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection (2), the following rules apply:

(i) The claim becomes enforceable at the later of:

(A) the time the claim is asserted; or

(B) the 90th day following the date of the check in the case of a cashier's check or teller's check or the 90th day following the date of the acceptance in the case of a certified check.

(ii) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(iii) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(iv) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to 30-4-302(1)(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(3) If the obligated bank pays the amount of a check to a claimant under subsection (2)(b)(iv) and the check is presented for payment by a person having the rights of a holder in due course, the claimant is obliged to:

(a) refund the payment to the obligated bank if the check is paid; or

(b) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(4) If a claimant has the right to assert a claim under subsection (2) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under either 30-3-309 or this section.

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2        NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an  
3        integral part of Title 30, chapter 3, part 3, and the provisions of Title 30, chapter 3, part 3, apply to  
4        [section 1].

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6 NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that  
7 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
8 act].

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10 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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